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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/583,241	06/15/2006	Jerry R. Awbrey	IDI-8-PCT-US	8251

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EXAMINER
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TYLER, STEPHANIE E

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3754

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/583,241	<b>Applicant(s)</b> AWBREY ET AL.	
	<b>Examiner</b> STEPHANIE E. TYLER	<b>Art Unit</b> 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 June 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 21-40 is/are pending in the application.
- 4a) Of the above claim(s) 26 and 33-40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-25 and 27-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Claim 26 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claim 26 is directed to a disposable dispensing system that has an indicator that shows where force should be applied to dispense the fluid from the container. This limitation is drawn to figures 9 and 10, and page 15 of specification, which were not elected by Applicant.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 26 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Double Patenting***

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 21-32 are rejected on the ground of nonstatutory double patenting over claims 1,8,10-27,30-39 of U. S. Patent No. 7,261,221 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows:

The claims presented in the current application contain identical or nearly identical language as in US Patent 7,261,221. For example, claim 15 of US Patent 7,261,221 reads "a hook integral to said removable hooking device, said hook extending from said hooking device in a side thereof opposite such surface when said hooking device is attached to such surface. A deformable container for containing said fluid, said container having an upper portion defining a through-hole therethrough and said lower portion forming a container mouth through which said fluid is flowable" which is identical to the claim language found in claim 21 of the pending application. Additionally, there are many other claims found in US Patent 7,261,221 that conflict with pending claims in the present application that are not discussed here.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See also MPEP § 804.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 21-25,27,28,30,31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Waskönig et al. (3,078,017) in view of Viegas (5,307,955).

The Waskönig et al. reference discloses a disposable inverted dispensing system having a removable hooking device (6,7,8) with a hook (8) integral to the removable hook device and an elevated skirt (6), a deformable container (1), the container having an upper portion (near element 2) and a lower portion (near element 9), the upper portion defining a through-hole (3) therethrough and the lower portion (near element 9) forming a container mouth (see fig.2) through which the fluid is flowable, said fluid is flowable, wherein a back side (see fig. 2) of said container (1) has a planar section (at lower portion of tube; see fig.2) that extends in the direction from said lower portion to said upper portion that engages the surface but is not attached to the surface, wherein said back side has a tapered section (see fig.2) that extends from said planar section in the direction from said lower portion to said upper portion; a cap (5) that is aligned with the mouth of the container (1), and, said container (1) being positionable on said hooking device (6,7,8) with said hook (8) extending through said through-hole (3) formed by said upper portion of said container (1) so that said container (1) hangs down from said hooking device (6,7,8).

However the Waskönig et al. reference fails to teach cap defining an aperture and/or dispensing valve that is operably alignable with said mouth of said container, said dispensing valve controlling the flow of the fluid; and wherein said container is a bag.

The Viegas reference teaches a cap (31) defining an aperture and/or dispensing valve (50) that is operably alignable with the mouth (30) of the deformable container/bag (10) for the purpose of controlling the flow the of the fluid to be dispensed from container/bag.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have reasonably modified the cap of the Waskönig et al. device with a cap as taught by Viegas in order to define an aperture alignable with the mouth of the container to provide unwanted leakage from container/bag when not in use.

6. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Waskönig et al. (3,078,017) in view of Viegas (5,307,955) as applied to claim 21 above, and further in view of Howard (6,308,923).

The Waskönig et al. and Viegas references disclose substantially all the structure and functionality of the invention. However, both references lack the suction cup device having a lever acting suction cup with lever formed by the hook.

The Howard reference teaches a suction cup device (12,14) including a lever (16) pivotally mounted to the suction cup device (12,14) with lever formed by a hook.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have reasonably modified the hook device of Waskönig et al. to

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include a lever on the suction cup as taught by Howard in order to allow the user to easily attach and detach the container/bag by the suction cup device that couples it to any surface.

7. Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Waskönig et al. (3,078,017) in view of Viegas (5,307,955) as applied to claim 21 above, and further in view of Davis (5,749,497).

The Waskönig et al. and Viegas references disclose substantially all the structure and functionality of the invention. However, both references lack a lid that contacts the surface but is not attached to the surface when in an open position.

The Davis reference teaches a container and hanger system (see fig.1) wherein the container that has a substantially planar surface on the lower portion of the container that rests on a surface when hung thereto; and includes a cap that is a flip top cap (11) that when in the open position, the lid of the flip top cap rests on the surface.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have reasonably modified the cap of the Waskönig et al. device that has a lid that rests on the surface when in open position as taught by Davis in order to allow the user to dispense liquid product for use when in the shower.

### ***Response to Arguments***

8. Applicant's arguments filed 6/4/2009 have been fully considered but they are not persuasive. Applicant objects to the Office's non-statutory double patenting rejection of claims 21-32 as premature because an amended had not been submitted yet. It is

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normal practice of the Office to reject all claims when patent application is review at the beginning of prosecution. It is clearly seen in the claims pointed out in

Pat.No.7,261,221 that there are double patenting issues that should be address by providing a Terminal Disclaimer. The Office disagrees with Applicant's objection to the double patenting rejection. Office stands on the non-statutory double patenting rejection. Next, Applicant argues that Waskönig et al. and Viegas do not disclose or suggest a system where a back side of a container has a planar section that extends in the direction from a lower portion to an upper portion that engages a surface but is not attached to the surface, and where the back side has a tapered section that extends from the planar section in the direction from the lower portion to the upper portion.

Office disagrees. If Applicant takes figure 2 of Waskönig et al. and draw a line from the surface wall down to the lower portion of the container, it can be clearly seen that the planar section at the lower portion of the container engages a surface, but is not attached to the surface. Also from the side view in figure 2 of Waskönig et al. it is clearly seen that the back side of the container has a tapered section. Therefore Office disagrees with Applicant on this limitation and stands on the above rejection. Regarding claim 32 the arguments are moot due to amendment to claim. See above rejection.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).



A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to STEPHANIE E. TYLER whose telephone number is (571)272-8059. The examiner can normally be reached on 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. E. T./  
Examiner, Art Unit 3754

/Kevin P. Shaver/  
Supervisory Patent Examiner, Art Unit 3754